



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 23, 1998

Ms. E. Cary Grace
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR98-2288

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118486.

The City of Houston (the city) received a request for records concerning the background investigation the city police department conducted before the requestor was rehired as a police officer in 1983. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. We have considered the exception you claim and reviewed the submitted information, Exhibit 2.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Chapter 143 of the Local Government Code sets forth civil service rules for municipal fire and police departments. Local Gov't Code § 143.002, .101. Subchapter G of that chapter sets forth provisions applicable to municipalities with a population of 1.5 million or more, including the city. *See* Open Records Decision No. 642 (1990). You assert that the submitted information, physical and psychological fitness for duty documentation and an internal memoranda, are protected from disclosure under section 143.089(g).

Section 143.089 of the Local Government Code provides for the maintenance of a fire fighter or police civil service file and what must be kept in that file:

(a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

(1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

(2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor.

(b) A letter, memorandum or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to substantiate the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence.

Section 143.089(d) states that if negative information is placed in the civil service file, the civil service director must notify the affected fire fighter, who has a right to file a written response to the negative information that was placed in the file. Section 143.089(e) provides a fire fighter a mandatory right of access to information in his or her civil service file.

Information that section 143.089(b) and (c) prohibit from being placed in the civil service file may be maintained in the fire department's internal file, as provided in section 143.089(g):

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting

information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

The court in *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), addressed the availability of information that is contained in the department's internal file pursuant to section 143.089(g). The court determined that section 143.089(g) makes confidential any records kept in a department's internal file. You inform this office that the requested information is not maintained in the officer's civil service file, but rather is maintained in the section 143.089(g) internal personnel file. We note that although section 143.089(e) contains a mandatory right of access for a police officer to obtain access to records in that officer's civil service file, there is no special right of access for an officer to review documents in an internal, section 143.089(g) file. Open Records Letter Nos. 98-2156 (1998), 97-0564 (1997), 96-1906 (1996), 96-0738 (1996). Thus, because you explain that the records are maintained within the internal, section 143.089(g) file, the submitted records, with one exception noted below, are confidential and may not be disclosed.

Release of one of the submitted documents is governed by another statute. We have marked this record. Chapter 611 of the Health and Safety Code provides for the confidentiality of mental health records created or maintained by a mental health professional. Section 611.002 provides in relevant part as follows:

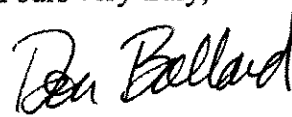
(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. Confidential records under section 611.002 must, however, be released to a patient or their representative. Health & Safety Code § 611.004(a)(4), (5), .0045(a) (release of confidential records to patient or patient's personal representative); see Gov't Code § 552.023 (person has a right of access to information that relates to that person and is protected from disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 565 (1990). Consequently, you must release the marked document to the requestor in this instance.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 118486

Enclosures: Marked documents

cc: Mr. Lawrence C. Markin
10 Milton Road
Braintree, Massachusetts 02184
(w/o enclosures)